gation and charge of the ship to the servants of the owner, can it be said that such a vessel is so far in the possession or control of the government that she, the ship, shall not be answerable legally for her torts or liable for other maritime liens,[8] out of courtesy to the nation which requisitioned her? This question was answered in the negative in the recent case of *The Attualita* (C. C. A. 4th Cir. No. 1479, Oct. 6, 1916.) There a privately owned trading vessel sent to this country for a cargo of cereals under requisition by the Italian government, but under the control of the employees of the owner, was libeled for damages resulting from a collision. On plea of immunity the Circuit Court of Appeals held, reversing the District Court, that a ship in these circumstances was not entitled to exemption from jurisdiction. The court seemed to be influenced largely by the fact that the persons in charge of the navigation of the ship remained the servants of the owners and that no government official was placed on board, so that the ship could not be said to have been in the actual possession of the government. The requisition being in effect the same as a charter-party, except that the owners had no volition in the matter, the action *in rem* might be maintained without disturbing the possession of the government. This decision shows the policy of the court, though there had been strong dicta to the contrary,[9] not to extend this principle of comity and create a class of vessels for which no one is responsible in any way, at a time when the practice of requisitioning merchant vessels is so common.

THE DOCTRINE OF REPRESENTATION.—Courts of equity adopt as a fundamental principle the rule that all persons interested in the subject matter of a suit should be parties to it, so that there may be a decree which will end the entire controversy.[1] But it is sometimes impracticable to have present all persons interested, and the strict application of the rule in these cases would prevent a plaintiff from obtaining justice. An exception is therefore made, for the sake of convenience, where parties whose interests in the suit are merely incidental are outside the jurisdiction;[2] but, if such parties are directly concerned, the court in their absence can make no decree which will bind them.[3]

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[8]It is a fundamental principle of the law of admiralty that a collision gives to the party injured a right *in rem* in the offending ship without regard to personal responsibility, the ship itself being considered the wrongdoer, liable in an action *in rem* for the tort and subject to a lien for the damage. See The Barnstable (1900) 181 U. S. 464. 21 Sup. Ct. 684. However, where such an offending vessel was the property of a foreign sovereign and engaged in public service, it was held immune from arrest in a proceeding *in rem* for damage caused by collision. The Jassy [1906] P. 270.

[9]The Athanasios (D. C. 1915) 228 Fed. 558; The Luigi (D. C. 1916) 230 Fed. 493. In the latter case, after the requisitioned vessel had been libeled, the owners gave bond for its release, and the court held that it would retain jurisdiction of the action on the bond, as that could not affect the rights of the foreign government.

[1]Story, Equity Pleadings (10th ed.) § 72.

[2]Palmer *v.* Stevens (1868) 100 Mass. 461; Calvert, Parties, 64; Story, Equity Pleadings (10th ed.) § 78.

[3]Cassidy *v.* Shimmin (1877) 122 Mass. 406.

There is another class of cases in which a court of equity will make a decree binding the interests of those not before it, which is not properly an exception to the general rule, but proceeds on the theory that the absentees are represented in interest before the court by some one of the parties present.[4] So where the parties are very numerous and they have a common interest or right, a few may file a bill on behalf of themselves and all others similarly situated;[5] and the court may name as defendant a few individuals of a large class.[6] In the case of real property a court of equity is able to make a complete decree even if only the person entitled to the first estate of inheritance is made a party;[7] and if there be no such person, then the tenant for life.[8] With the development of the contingent remainder from a mere possibility which is easily destructible to something partaking of the nature of an estate in property,[9] there appears an interesting application of this doctrine of representation. In the recent cases of *Coquillard* v. *Coquillard* (Ind. App. 1916) 113 N. E. 474, and *Coquillard* v. *Coquillard, ibid.* 481, the testator devised to his wife for life, remainder to his two sons for life as tenants in common, with contingent remainders in fee to the unborn children of those sons. The rest and residue was given to the wife and the sons as tenants in common. There were no children *in esse*. Since the property was rapidly deteriorating in value, the sons and the wife applied to the court for the partition and sale of the property; and the question arose whether a decree for sale would bind the contingent remaindermen not *in esse*, and hence not parties to the suit. The court held that the interests of those not *in esse* were represented by the parties before the court, and a decree of sale should be made which would bind them. It was further directed that the fund received from the sale of the property should be held under the same limitations as those created by the will.

A court of equity, proceeding on the theory of representation, has an inherent jurisdiction to decree the sale of realty so as to bind the interests of contingent remaindermen;[10] and statutes generally confirm this power.[11] If the contingency lies in the happening of some event, no decree will be made unless the contingent remaindermen are before the court.[12] But if the person to take is not *in esse*, his in-

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[4]Calvert, Parties, c. 2.

[5]Dornan *v.* Buckley (1905) 119 Ill. App. 523.

[6]See Wallace *v.* Adams (1907) 204 U. S. 415, 27 Sup. Ct. 363.

[7]Dunham *v.* Doremus (1897) 55 N. J. Eq. 511, 37 Atl. 62; Calvert, Parties. 48 *et seq.*

[8]Ridley *v.* Halliday (1901) 106 Tenn. 607, 61 S. W. 1025.

[9]See Foulke, Vested & Contingent Remainders, 15 Columbia Law Rev. 680: see also 12 Columbia Law Rev. 727.

[10]Ridley *v.* Halliday, *supra;* Mayall *v.* Mayall (1896) 63 Minn. 511, 65 N. W. 942; Bedford *v.* Bedford (1912) 105 Ark. 587, 152 S. W. 129.

[11]See McClure *v.* Crume (1910) 141 Ky. 361, 132 S. W. 433; Downes *v.* Long (1894) 79 Md. 382, 29 Atl. 827. In North Carolina, the courts formerly refused to decree such a sale on the ground that the contingent remaindermen were not before the court. See *Ex Parte* Yancey (1899) 124 N. C. 151, 32 S. E. 491. But statutes passed in 1903 and 1905 gave the courts this power. See Bullock *v.* Planter's etc. Oil Co. (1914) 165 N. C. 63, 80 S. E. 972.

[12]Moseley *v.* Hankinson (1884) 22 S. C. 323.

terest will be bound by a decree,[13] provided he is represented by some one whose interests are really identical with his own.[14] The decree of sale must provide for the preservation of the interests of those entitled to take under the will by substituting the fund for the land.[15]

The *Coquillard* cases gave an excellent opportunity for the application of the doctrine of representation. The residuary clause of the will carried over to the testator's wife and two sons a vested determinable estate in fee,[16] subject to be divested on the birth of a child to either of the sons. Hence, all parties *in esse* who had any interest in the estate were before the court, and they fairly represented the interests of the remaindermen not *in esse*. In order to preserve the interests of all parties, it was necessary to decree a sale of the realty. The decree, by substituting the fund realized from the sale of the land for the land itself, followed the wish of the testator as nearly as possible. The case illustrates very well how the doctrine of representation, by doing away with the inconvenience of keeping estates tied up, works substantial justice to all concerned.

SEPARATE OWNERSHIP OF SURFACE OF LAND AND MINERALS UNDER IT.—While the original owner of the fee to land owns from the clouds to the centre of the earth, he may subdivide his property in any way

[13]Hale *v.* Hale (1893) 146 Ill. 227, 256, 33 N. E. 858; Kent *v.* Church of St. Michael (1892) 136 N. Y. 10, 32 N. E. 704; Ridley *v.* Halliday, *supra*. Since a conversion of the realty into personalty is in violation of the testator's wish, the court will not make such a decree merely for the benefit of the parties, but only where it appears necessary in order to preserve the estate from destruction. Thompson *v.* Adams (1903) 205 Ill. 552, 69 N. E. 1; Mayall *v.* Mayall, *supra*. While there seems to be no real distinction between a remainder contingent on the happening of an event and one uncertain as to the persons ultimately entitled to enjoyment, see 14 Columbia Law Rev. 66, in this case such a distinction seems necessary, for contingent remaindermen *in esse* can be brought before the court, while those *in posse*, of course, cannot.

[14]Downey *v.* Seib (1906) 185 N. Y. 427, 78 N. E. 66; Chaffin *v.* Hull (C. C. 1892) 49 Fed. 524; Smith *v.* McWhorter (1905) 123 Ga. 287, 51 S. E. 474.

[15]Monarque *v.* Monarque (1880) 80 N. Y. 320; Ruggles *v.* Tyson (1889) 104 Wis. 500, 79 N. W. 766; Bofil *v.* Fisher (S. C. 1850) 3 Rich. Eq. 1.

[16]Under the old common law, where, as in this case, A devised to B for life with contingent remainder in fee to B's unborn children, the fee was said to be in abeyance or *in nubibus*. 2 Bl. Comm. *107. But it is now generally considered that the fee remains in the grantor as a vested estate, determinable on the happening of the contingency, 4 Kent, Comm. *258 *et seq.*, and passes under a residuary clause. Egerton *v.* Massey (1857) 3 C. B. (N. S.) *338. It may be termed a quasi-reversion while retained by the grantor, but when devised in a residuary clause, it is more correctly called a determinable fee, as in Coquillard *v.* Coquillard. At any rate, whether disposed of or not by the grantor, it is a vested interest. Although in 2 Reeves, Real Property, 1140, footnote 6, and in Chaplin, Suspension of the Power of Alienation (2nd. ed.) § 308, the authors speak of a contingent reversion, citing Floyd *v.* Carow (1882) 88 N. Y. 560, the court there, in using the word "contingent", apparently means by it an estate on condition subsequent, which is of course "contingent" in one sense; it is really what has been here termed a quasi-reversion.